

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DISTRICT**

JOSE MARIA DECASTRO)	Case No. 22-cv-00204
)	
<i>Plaintiff,</i>)	
)	
vs.)	
)	
PAM WAGNER, et al.)	
)	
<i>Defendants.</i>)	
_____)	

**PLAINTIFF’S REPLY TO IRONTON CITY DEFENDANTS’ RESPONSE IN
OPPOSITION TO PLAINTIFF’S MOTION TO RECONSIDER**

Plaintiff Jose Maria DeCastro (“Plaintiff”), offers the following reply to the opposition (“Opposition”) memorandum from the Ironton City Defendants (“Defendants”) (ECF No. 54) of Plaintiff’s Motion for Reconsideration (“Motion”) (ECF No. 49). Since Plaintiff outlined the legal authority in his original motion, such information is not repeated here and Plaintiff does not intend by its omission from discussion here, to concede to any point previously raised related to Plaintiff’s request for reconsideration.

In support of this motion, Plaintiff submits a memorandum of law, which is fully incorporated herein.

INTRODUCTION

Plaintiff has filed a motion for reconsideration of this Court’s dismissal of Plaintiff’s First Amended Complaint (“FAC”) due to legal or factual error in the decision to dismiss or due to excusable error or neglect of Plaintiff.

Defendants have filed an opposition to Plaintiff’s motion for reconsideration, mostly misstating the facts.

POINTS AND AUTHORITIES

A. Plaintiff cited grounds for Rule 59 motion. Defendants mistakenly argue that Plaintiff didn't argue any valid grounds for his Rule 59 motion. Opposition, 3:¶3, 10: ¶1. This is false and not represented in the pleadings. Plaintiff argued errors in law, errors of fact, abuse of discretion, and excusable error by the Plaintiff. Motion, §§ A – G.

B. No adequate state remedy. Defendants mistakenly argue that Plaintiff was both provided a valid state remedy and also never argued that he wasn't. Opposition, 9. This is false and not represented in the pleadings. Plaintiff argued both of these. FAC ¶ 16; ECF No. 32 ¶24.

A. Amendment would not be futile. Defendants further argue that an amendment would be futile. As evidenced by proposed Second Amended Complaint, it would not be futile.

CONCLUSION

This court should reconsider the dismissal of Plaintiff's FAC under the correct law and facts, and allowing for Plaintiff error, and deny the dismissal or minimally grant the dismissal with leave to amend.

DATED: September 17, 2023

Respectfully submitted,

/s/ Jose Maria DeCastro
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Jose Maria DeCastro